

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

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|---------------------------|---|----------------------------|
| United States of America, |) | CRIMINAL NO. 3:04-0074-CMC |
| |) | |
| v. |) | OPINION and ORDER |
| |) | |
| David K. Simpson, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the court on Defendant's motion for reconsideration. Defendant contends that his recently-filed motion for relief under 28 U.S.C. § 2255 is not a second or successive motion for relief. ECF No. 52.

Defendant's first § 2255 motion was considered by this court and summary judgment was granted to the Government on August 26, 2005. *See Simpson v. United States*, D.S.C. Civil Action No. 3:05-1351-CMC. The motion for relief under § 2255 was dismissed with prejudice.

Defendant argues that the first § 2255 was dismissed on "procedural" grounds and therefore the current motion for relief is not second or successive. This argument fails. The first motion was indeed dismissed on "procedural" grounds; however, the adjudication was on the merits, and the dismissal was with prejudice.

Defendant's motion for reconsideration is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
October 28, 2013